IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5067 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATIONAL DAIRY DEVELOPMENT BOARD

Versus

B.C. DANDIWALA

Appearance:

1. Special Civil Application No. 5067 of 2004

MR DC DAVE for Petitioner

MR SN DIWANJI for Respondent

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 19/08/2004

ORAL JUDGEMENT

1. Rule. Mr.S.N.Diwanji, the learned advocate

waives service of notice of rule, for the respondent.

2. At the joint request of the learned advocates appearing for the parties, this petition is taken up for final disposal, today.

3. In the present petition, the petitioner has challenged the order dated 01.04.2004 passed by the Industrial Tribunal, Nadiad below Ex.19 in Reference (ITCN) No.9 of 2002, filed by the present respondent workman.

4. Broadly stated the facts are, that the respondent workman was employee of the petitioner - National Dairy Development Board (NDDB). It is the case of the respondent that pursuant to the V.R.S. Scheme published by the petitioner - NDDB, the respondent - workman gave his application dated 23.05.1996 and requested for being relieved from service with effect from 22.07.1996. It is the case of the respondent that instead of accepting his request for relieving him with effect from 22.07.1996, he was ordered to be relieved with effect from 21.06.1996. It is the case of the respondent that the said action of the petitioner is illegal and, therefore, he raised above mentioned industrial dispute before the Industrial Tribunal, Nadiad.

5. The case of the petitioner, however, is that the respondent - workman had accepted the retirement with effect from 21.06.1996 and had also voluntary accepted all the benefits, pursuant to his being relieved with effect from 21.06.1996, on voluntary retirement.

6. In the present petition, we are concerned only with an order passed by the Industrial Tribunal at an interlocutory stage and main dispute, is still pending before the Industrial Tribunal. I, therefore, do not propose to make any observation with respect to the merits or demerits of the rival contentions regarding legality of the action of the employer.

7. During the pendency of the above mentioned dispute, the respondent - workman filed an application dated 08.01.2004 before the Industrial Tribunal and requested that the witness summon may be issued against the three persons named therein, who are the Chairman, Manager (Administration and Personal), and Executive (Legal) of the petitioner - NDDB. It is pertinent to note that in his application dated 08.01.2004 (Ex.19), the respondent - workman has not indicated any reason whatsoever for summoning these persons as witnesses

before the Industrial Tribunal.

8. Before giving the said application dated 08.01.2004, the respondent - workman had also written a letter dated 17.12.2003 to the Chairman of the petitioner - NDDB requesting her to remain present as a witness before the Tribunal on 08.01.2004. In the said letter dated 17.12.2003 also, the respondent had not indicated any reasons whatsoever for requesting the presence of the said witness before the Tribunal.

9. The Industrial Tribunal by its impugned order dated 01.04.2004 passed below Ex.19 was pleased to allow the said application and granted request of the respondent for issuance of summons to the said witnesses, in the proceedings.

10. The main reason for allowing an application as emerging from the impugned order is that the provisions of Civil Procedure Code are not applicable to the industrial adjudication and that the Industrial Tribunal while trying the Reference in addition to power conferred under the Industrial Disputes Act also enjoys power under the Civil Procedure Code, while trying a Civil Suit with respect to summon and examine suo motu any person whose evidence appears to be material. In view of the availability of the powers as mentioned above, the Industrial Tribunal was pleased to make the following observations.

> "Above are the only provisions under the ID Act regarding the issuance of summon. Tribunals are empowered to issue summon suo motu also and it therefore, follows that when a party applies for summon, it cannot turn down the request for summon. There is no law which disentitles a party from calling his adversary as a witness. It was also argued by learned Shri Oza that the workman himself has not entered into the witness box and hence he cannot be allowed to entered into the witness from the management side first. Learned Shri Diwanji submitted that the order of examination of witnesses is prerogative of the party concerned; and that a party has full discretion to decide as to who will be examined first. Learned Shri Oza has not been able to show the law contrary to the submission of Shri Diwanji.
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> In view of what is discussed above, this application Ex.19 is allowed. The summon to the

witnesses be issued.

There is no orders as to costs."

11. While challenging the said order dated 01.04.2004 passed by the Industrial Tribunal, the learned advocate Shri D. C. Dave, appearing for the petitioner has contended before me that the respondent has not stated any reason whatsoever for summoning the said witnesses before the Tribunal. He has submitted that the practice of calling opposite parties as witnesses is not a healthy practice and it should be deprecated. He has, further, submitted that in view of the fact that the respondent was requesting for issuance of summons to the opposite parties as witnesses, the Industrial Tribunal erred in law allowing such an application, without there being any material whatsoever on record justifying such a request.

12. In support of his contention, Shri Dave has relied upon the decision in the case of PIRGONDA HONGONDA VS. VISHWANATH GANESH AND OTHERS, reported in AIR 1956 Bombay 251, wherein it is observed that "normally a party to the suit is expected to step into the witness box in support of his own case and if a party does not appear in the witness-box it would be open to the trial Court to draw an inference against him. If a party fails to appear in the witness box, it should normally not be open to his opponent to compel his presence by the issue of a witness summons."

13. Learned advocate for the petitioner has also placed reliance upon the decision, in the case of MANGE RAM Vs. BRIJ MOHAN AND OTHERS, reported in AIR 1983 S.C. 925 and particularly drawn my attention to paras-8 and 9 of the said decision, wherein it is observed that "Sub-Rule (1) of Rule 1 of Order XVI casts an obligation on every party to a proceeding to present a list of witnesses whom it proposes to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court. Sub-rule (2) requires that the parties seeking the assistance of the Court for procuring the attendance of a witness must make an application stating therein the purpose for which the witness is proposed to be summoned. Sub-rule (3) confers a discretion on the Court to permit a party to summon through Court or otherwise any witness other than those whose names appear in the list submitted in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list." It is further observed that "upon conjointly reading of this provision, it transpires that the obligation to supply

the list as well as the gist of the evidence of each witness whose name is entered in the list has to be carried out in respect of those witnesses for procuring whose attendance the party needs the assistance of the Court." It is further observed that "where the party wants the assistance of the Court to procure presence of a witness on being summoned through the Court, it is obligatory on the party to file the list with the gist of evidence of witness in the court as directed by sub-rule (1) of Rule 1 and make an application as provided by sub-rule (2) of Rule 1. But where the party would be in a position to produce its witnesses without the assistance of the Court, it can do so under Rule-1A of Order XVI irrespective of the fact whether the name of such witness is mentioned in the list or not."

13. Learned advocate for the petitioner has also placed reliance upon the decision, in the case of N. YOVAS AND ANOTHER Vs. IMMANUEAL JOSE AND OTHERS, reported in AIR 1996 KERALA 1. Paras-8 and 9 of the said decision, are reproduced hereunder :-

> "8. Under Order XVI, Rule (2) of the Code of Civil Procedure a party desirous of obtaining any summon for the attendance of any person shall file in court an application stating therein "the purpose for which the witness is proposed to be summoned." The object of of disclosing such purpose is to enable the court to decide whether examination of such witness is of material benefit to decide the dispute. Court has to pass an order on the application and, therefore, a duty is cast on the court to consider whether the purpose of citing the counsel of the opposite party as a witness is to speak to any material fact. If the court is not so satisfied, the court is not obliged to issue summons to him."
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> "9. The above discussion takes us to the view that there is the need to make a judicial consideration before issuing summons to the counsel of the opposite party bearing in mind the possible utility of his evidence and also the consequences which entails not only to the counsel concerned but to the party who engaged him. According to us, the court shall be greatly circumspect while deciding to grant permission to summon the counsel of the opposite party as a witness."

14. Mr.S.N.Diwanji, learned advocate appearing for

the respondent has supported the order passed by the Industrial Tribunal. He has submitted that the respondent - workman had sought voluntary retirement from a particular date. His application seeking voluntary retirement could have been accepted by the Managing Director and no other authority. He has, therefore, submitted that the evidence of those witnesses, is essential and vital for deciding the issues arising in the dispute.

15. Learned advocate for the respondent has also contended that the petitioner has no locus standi to file the present petition, since according to him, the order is passed against the said three officers, who are summoned as witnesses and the present petitioner cannot be termed as a party aggrieved by such an order. He, has, therefore, questioned the local standi of the present petitioner to file this petition.

16. In support of his contention, the learned advocate for the respondent has placed reliance upon the decision, in the case of HINDUSTAN SALTS LTD. Vs. NOORADRAJ M. PATHAN, reported in 2004 (2) G.L.H. 495 and contended that this Court in exercise of power under Articles 226 and 227 of the Constitution of India, should not interfere with interlocutory orders. He has, particularly, placed reliance upon paras-12 and 13 of the said decision.

17. I have carefully considered the rival submissions made before me and also perused the material on record. From the materials placed before me, I find that in the application Ex.19 dated 08.01.2004, the respondent has not indicated any reason whatsoever for seeking presence of the said witnesses through the aid of the Tribunal. In his earlier letter dated 17.12.2003 also, respondent has not indicated any reason, as to why the presence of the Chairman was necessary for giving evidence. At no stage, through any document besides these two documents also, the respondent has established need to summon the officers of the petitioner Board, as the witnesses to be examined on behalf of the respondent. Undoubtedly, the Industrial Tribunal has powers to summon any person as witness or even to examine him suo motu. The said power is hedged with the limitation that it is exercised wherein it appears to the Tribunal that evidence of such person is material, for the purpose of deciding the dispute between the parties. The powers to summon the witnesses cannot be exercised in absence of justification as mentioned earlier. The respondent has not laid down any foundation for calling the persons as witnesses. In

my view, without examining the need for calling such persons as witnesses, it was not possible to allow, the application of the respondent by the Industrial Tribunal and issue witnesses summon only on the basis of the fact that Tribunal enjoyed such powers. Under Rule-28 of Industrial Disputes (Gujarat) Rules itself it is provided that power can be exercised when the Tribunal finds that the evidence of such person is material for deciding the dispute arising between the parties. The Tribunal without examining the need of issuing summons to such persons as witnesses and without examining as to how such evidence of such person is material in the deciding the dispute, simply issued the witness summons on a mere asking of the respondent barely on the premise that the Tribunal enjoys such powers. In my view, the Tribunal has committed serious error of law in passing the impugned order. As found from the decision relied upon by the learned advocate for the petitioner that the summons requesting the presence of the adversary, as witnesses in any legal proceedings is an unusual request. The Court would view such a request with caution. This is not to say that under no circumstances, the Tribunal could summon the adverse party as a witness. This, however, cannot be done without proper examination of the need to call such witnesses before the Tribunal. I find that the Tribunal has exceeded the jurisdiction vested in it and issued witness summons against the officers of the petitioner, without there being any material to support such an action.

18. I am unable to agree with the learned advocate for the respondent that the petitioner has no locus standi to file the present petition. It cannot be denied that the petitioner is the adversary party in the dispute pending before the Industrial Tribunal. Any order passed therein in favour of the respondent would adversely affect the petitioner. The persons whose presence is summoned by the Industrial Tribunal, cannot be only persons who would be aggrieved by the impugned order.

19. I am also unable to agree with the learned advocate for the respondent that this being an interlocutory order, this Court would not interfere with the same at this stage. The learned advocate for the respondent has relied upon the decision, in the case of HINDUSTAN SALTS LTD. Vs. NOORADRUJ M. PATHAN, reported in 2004 (2) G.L.H. 495, wherein it is held that "there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even

after the final award."

20. In the said decision, this Court had relied upon the another decision of this court in the case of Cadila Healthcare Ltd. Vs. Union of India and others, reported in 1998 (2) G.L.H. 513, wherein also it was observed that challenging interlocutory order, order not deciding the case finally, in that event, even if the interlocutory order is illegal, in absence of failure of justice and in view of the right to challenge the said order when it becomes final, petition against the interim order not maintainable. The underlying principle for refusal, to interfere therefore, appears to be that the order does not decide rights finally and order can be challenged at the time when the issues are decided finally by the appropriate Court. In the present case, however, it would not be possible to examine legality of the impugned order at a later stage. If the present order of the Industrial Tribunal is allowed to take effect, the damage to the petitioner would be ever lasting. In that sense though the order passed by the Industrial Tribunal is at interlocutory stage, the legality thereof is required to be examined at this stage alone.

21. For the above reasons, I am inclined to accept the petition and uphold the challenge of the impugned order dated 1st April, 2004 and I hereby quash and set aside the same.

22. In the result, the petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

[Akil Kureshi,J.]
(vijay)